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ABSTRACT

The problems of enacting and implementing child advocacy laws at State and Federal levels are presented along with two cases which illustrate these problems and point to the advocacy role that psychologists can perform. The first case deals with the use of corporal punishment in family day care homes in Michigan. In 1974, rules against corporal punishment met strong opposition form many day care home mothers. This opposition led to modifications of the discipline rules and the State Department of Social Services (DSS) subsequently received protests that the language of the rules was now too permissive. The final version of the rules was a compromise between the first and second drafts. The second case reported deals with the difficulty of achieving implementation of enacted child advocacy laws and describes a child care center which (in spite of repeated protests) continued to violate many DSS licensing and fire hazard regulations. The center operator appealed the closing of her program; a review committee was set up to evaluate the validity of DSS claims, and the program is still in operation in open violation of state regulations. No judicial decision has yet been made. Implications of these two cases are discussed. (GO)

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CHILDREN'S RIGHTS: COUNTERING THE OPPOSITION[1]

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The past decade, marked by the initiation of Head Start in 1965, has brought to the forefront of our society the needs of children, particularly children from less economically advantaged portions of our society. Much has been written and spoken on the needs of such children. The Joint Commission on the Mental Health of Children (1971) cited child advocacy as a key concept for the 1970's. Included in this concept is the idea of a complete service delivery system that would meet the total needs of every child and, more importantly, a guarantee of the rights of all children. However, as McDermott et al. note "Because the word 'advocacy' is so broad, it can be subject to various interpretations and definitions. There is a real hazard that it may become simply another inspirational rallying cry for a short-lived evangelism rather than the beginning of a continuing national commitment. It might simply serve as a new lobby bandwagon for child mental health professionals to jump upon, or yet another transient federal grant program embarked upon without adequate consideration of the readiness of society to make it a lasting commitment (1973, p. 1203)."

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Time and experience indicate that the one way to implement action on behalf of a cause in our society is through enactment and enforcement of legislation. With regard to children, those who have a responsibility to provide legislative input have not done so. As Clayton Fritchey (1975) noted when a joint congressional committee started taking testimony before drafting a new child development act, we must remember the Nixon years. The 1970 White House Conference on Children and Youth made 28 recommendations to President Nixon. Few of these were adopted. In fact, Nixon in 1971 vetoed the $2 billion Child Development Act. With our present administration, similar resistance is expected. This resistance must be met with facts, unified planning, and proposed solutions.

The need for advocacy on the Federal level is clear. Psychologists must continue to seek direct input into legislative hearings--and indeed much of the testimony on behalf of children has been by psychologists. However, Federal level input is rendered weak unless supported by local and state efforts. Through the presentation of two cases, I will point out the advocacy role each of you can perform. While both of these examples are from Michigan, the principles involved are applicable across the country.

The first case deals with the use of corporal punishment in family day care homes in Michigan. A family day care home differs from a day care center in that children are cared for in a person's home rather than in some organized setting such as a church; children of any age can be cared for, including infants; and the number of children allowed is limited to six in any home, including the caregiver's own.

In August of 1973 the governor of Michigan signed a new bill licensing and regulating day care centers and family day care programs. From that time until February, 1974 committees were set up to draft rules and regulations governing the conduct of programs. One of the 12 committees set up was responsible for developing the day care home rules and regulations. This committee contained both professionals and parents. Their initial proposal stated:

R 400.1305. Discipline.

Rule 1305. (1) A caregiver shall talk with a parent about the methods of child-handling and discipline to insure that the methods used shall encourage cooperation, self-direction and independence.

(2) A caregiver shall not use any of the following methods of handling children:
(a) All forms of physical punishment.
(b) Restricting a child's movement by binding or placing him in a confining area.
(c) Withhholding of food, rest or toilet facilities.
(d) Mental or emotional cruelty including verbal abuse or withholding of affection.
(e) Isolation of a child for any purpose other than to help the child regain his control and then only for a period of time which shall not exceed 15 minutes.

The response of many day care home mothers was immediate and intense. One well organized group from Monroe County retained the services of an attorney in order to get the proposed rule changed. Marilyn Beardsley, president of the Monroe County Family Day Care Council stated "As it was written, it forbade giving a two-year-old a swat on a diapered rear end (Detroit Free Press, 1974)." She ignored the issue that no matter how mild the pat, there is risk of physical damage. In all, over 300 letters of protest of the discipline rule were sent to the State Department of Social Services (DSS).

In August, 1974 further public hearings on the proposed rules and regulations were held. At these the day care home mothers contended that it is the right of parents to determine how their children shall be disciplined, and that no law shall prohibit the use of parent approved discipline. They further said that if the proposed rules were passed they would tear up their licenses and continue to operate in defiance of the law. Other representatives of child care groups spoke on behalf of the rules as written. In particular, the need for exceptional standards of care and for quality of care at all times were stressed. However, no professionals were involved in testifying on behalf of the needs of children.

At the reconvening of the drafting committee, specific revisions to the rules and regulations were proposed by the Monroe County group. These suggested changes were adopted by DSS but were rejected before being promulgated.

The proposed revision was:

Strike present R 400.1305 (2)
Add: New 400.1305 (2)

A caregiver shall not use any method of child handling or discipline that has not been discussed and fully approved in advance by the child's parent(s) and shall not use regardless, any of the following:

(a) severe corporal punishment (as already defined in courts of law).
(b) mental or emotional cruelty (as already defined in courts of law).
(c) withholding of necessary food, as defined in rule 400.1307, or necessary rest and toilet use.
(d) no child shall be disciplined or punished by confining them in a closet or like cubicle. This also includes binding.
(e) isolation of a child for any purpose other than to help the child regain their self control or the protection of other children and then only in a suitable (fit for human habitation) area and for a period of time which shall not exceed 15 minutes.

Other groups protested this in house decision concerning the revision to Harold Gazan, Director of Interagency Services of the DSS and a member of the State legislative review board. Their contention was that the best interests of children should be considered as primary. Sally Louise Brown, Executive Coordinator of the Wayne County Child Care Coordinating Council wrote:

> "We hope that you will share our deep concern over the permissive language in the Regulations in regard to corporal punishment, no matter how it is defined or limited. We know that as elected officials you feel a special responsibility to the children of our state, who cannot speak for themselves. With mounting violence at the adult level, and with child abuse an appalling and increasing reality in our society, our government must put its sanctions on the side of protection for the children--both to insure their safe development and to break the cycle of violence toward the young breeding violent adults.
>
> "In Family Day Care Homes we are speaking of very young children--from birth to five or six years of age. Do adults really need permission to hit these children in order to maintain control? We know many day care mothers who manage superbly and creatively without the use of physical punishment. We believe it would be a sad regression were the established government in Michigan to sanction the use of corporal punishment as a right, for persons to whom we entrust our young children. (Personal communication)."

The result of intense work on behalf of children was a compromise in the final rules and regulations. They state that:

> R 400.1305 Discipline.
> Rule 1305
>
> (1) A caregiver shall talk with a parent about the methods of child handling and discipline to insure that the methods used encourage cooperation, self-direction and independence.
>
> (2) A caregiver shall not use the following methods of handling children:
>
> (a) Any form of corporal punishment or physical force. Non-severe discipline or restraint which is reasonabley necessary, based on a child's development, to prevent a child from harming himself or other persons or property may be used only when a caregiver has obtained prior written consent from a parent.

(b) Restricting a child's movement by binding or tying him.
(c) Confining a child in an area such as a closet, locked room, box, or similar cubicle.
(d) Withholding necessary food, rest or toilet use.
(e) Mental or emotional cruelty such as humiliating, shaming or frightening a child.

My second example deals with the difficulty in achieving implementation of laws concerning children once they have been enacted. In Michigan, the prevailing attitude toward monitoring of child care facilities is one of working to continually upgrade programs. Until this past February, no Detroit area child care facility had been closed by the Department of Social Services in more than two years.

The operating licence of the Michigan Institute for Child Development was revoked after months of investigation on February 7th, 1975. Among the charges in the revocation order were statements that the center, licensed for 90 children had contained as many as 258; the adult: child ratio generally was more than the required 1:10 and at one time 67 children in one room were cared for by only two adults; and that there was a significant fire hazard created by flammable ceilings and improper duct dampers. All of these violations had been repeatedly called to the attention of the center operator, Mrs. Roslyn Murrary, since July, 1974.

In a newspaper interview Mrs. Murray contended that she operated an excellent program, one in which the children were academically stimulated. She also stated that she could not afford to keep the center operating with the state mandated maximum of 90 children. She further maintained that her total staff of 41 included at least 15 persons employed as nursery school teachers. She was also

quoted as saying "They say we don't have any play equipment, but the day care inspector is upset because our children play chess. He wants them running all over. All of our children play each day (Detroit Free Press, 1975)." The article also mentioned that several employees said that the children were only rarely allowed to play on the one large sliding board and rocker in the school's playroom.

Mrs. Murray appealed the closing of her program to the Wayne County Circuit Court. The court assigned a review committee responsibility for evaluating the validity of the DSS claims. At a full hearing held on March 21, 1975, Mr. Gazan, the committee head, stated that the committee was allowed entrance only after three hours of knocking and after two adults were admitted to the building. At this time staff:child ratios were computed, all children present were counted, and each child's name obtained from classroom teachers. The court ordered team found that 191 children were at the center on the day of their inspection, the fire inspection had not yet been made, and that the two adults earlier seen entering the building provided the appropriate staff:child ratio.

In her testimony, Mrs. Murray stated that some of the names given in the report were falsified, as those children were not registered in her program. This can be questioned in light of the fact that all names were obtained from center personnel.

At present no judicial decision has been made. The program still operates in open violation of state regulations. This continued operation is due to several factors. First, the parents support the program with its stress on

early reading. Second, community and political leaders have been swayed by Mrs. Murray's claims and contentions of racial persecution. And third, dissent by other community groups has been minimal due to a fear of countersuit by Mrs. Murray if the court decides in her favor. Therefore, it appears that the pressure being used in this case is delaying a legal decision upholding what is a clear violation of state laws.

What implications do these two cases have for children's advocates in general and for psychologists in particular? First, they serve to point out the need for greater advocacy and continuing monitoring of children's programs. The end of concern for children does not come with the passage of legislation. In a way, that is just the beginning. Social agencies and their staffs are resistant to change. Even the most dynamic, concerned person employed within an agency is faced with the obstacles of administrative lethargy, budgetary restraints, and the general tendency for social organizations to maintain the status quo. Given present negative attitudes toward advocacy as a legitimate part of the job description for agency employees, effective advocates are presently most often persons who function outside traditional agency structures. The supposed efforts of legislators on behalf of Mrs. Murray and the fear other agencies have about testifying or behalf of children support the need for independent advocacy.

A second implication of the two cases is the need for parent education programs concerning the rearing and development of children. Over the past decade, parent education and early intervention research has shown the difficulty of

changing parental attitudes and practices. Bronfenbrenner (1974) in reviewing this literature has argued that any intervention program can only be effective when it considers the total ecology of the families for whom it is designed. Education concerning the rights of children and alternatives to corporal punishment is difficult, but it can and must be done.

What role can psychologists play as advocates and now can we become more effective advocates? Generally, psychologists represent a uniquely trained professional group in terms of their education and experience in understanding and modifying behavior. More specifically, effectiveness of advocates can be enhanced through joining and participating actively in state psychological associations in order to develop a coherent advocacy force; working with such organizations concerned with children's rights as the Day Care and Child Development Council and community-coordinated child care agencies; working with legal advocacy groups such as the ACLU and the National Center for Law and the Handicapped; and participating in ongoing parent education efforts in your community.

In summary, remember that making something illegal does not mean that people will stop doing it and that advocates must never give up in their efforts.